



# PUBLIC NOTICE

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**DA 21-1288**

**Released: October 14, 2021**

## **WIRELINE COMPETITION BUREAU ADOPTS PROTECTIVE ORDER FOR ROBOCALL MITIGATION PROGRAM DESCRIPTIONS**

### **WC Docket No. 17-97**

The Wireline Competition Bureau (Bureau) hereby adopts the attached Protective Order, which will govern the submission of and access to confidential and highly confidential information included in mitigation program descriptions submitted to the Robocall Mitigation Database. Implementation certifications, contact information, and other data submitted to the Robocall Mitigation Database are public and cannot be marked as confidential.

The Commission's rules require voice service providers to certify in the Robocall Mitigation Database that their traffic is either signed with STIR/SHAKEN caller ID authentication technology or subject to a robocall mitigation program.<sup>1</sup> Voice service providers that certify that some or all of their traffic is subject to a robocall mitigation program also must detail in their certifications the reasonable steps they are taking to avoid originating illegal robocall traffic. In establishing the public Robocall Mitigation Database, the Commission stated that its goals were to promote transparency and to allow and encourage industry to self-police by making robocall mitigation plans visible to other voice service providers and the public at large.<sup>2</sup> At the same time, recognizing the potential sensitivity of this information, the Commission directed the Bureau to adopt a protective order governing the submission of and access to confidential and highly confidential information included with mitigation program descriptions.<sup>3</sup>

On May 10, 2021, the Bureau released a Public Notice seeking comment on the protective order it proposed to adopt.<sup>4</sup> The Bureau proposed adopting a protective order similar to others used by the Bureau but with certain modifications appropriate for the Robocall Mitigation Database.<sup>5</sup> In response to this Protective Order Public Notice, we received one reply comment.<sup>6</sup> We find that the attached Protective Order best balances the Commission's goals of transparency of submitted robocall mitigation program information and the protection of confidentially-filed information. We reiterate that implementation certifications, contact information, and other information not included in robocall

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<sup>1</sup> *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1902, para. 82 (2020) (*Second STIR/SHAKEN Order*).

<sup>2</sup> *See Second STIR/SHAKEN Order*, 36 FCC Rcd at 1900, para. 77.

<sup>3</sup> *Second STIR/SHAKEN Order*, 36 FCC Rcd at 1902-03, para. 83.

<sup>4</sup> *Wireline Competition Bureau Seeks Comment on Protective Order for Robocall Mitigation Database Collection*, WC Docket No. 17-97, Public Notice, DA 21-546 (WCB May 10, 2021) (*Database Protective Order Public Notice*).

<sup>5</sup> *Database Protective Order Public Notice* at 1.

<sup>6</sup> USTelecom – The Broadband Association Reply Comments, WC Docket No. 17-97 (rec. June 8, 2021) (USTelecom Reply Comments).

mitigation program descriptions submitted to the Robocall Mitigation Database are public and cannot be marked as confidential.

*Submission of Information.* In the attached Protective Order, we adopt a process for submitting redacted and unredacted copies of robocall mitigation program descriptions via the Robocall Mitigation Database portal. In the Protective Order Public Notice, we proposed adopting a process for submitting confidential information in which a voice service provider must submit a confidentiality request in WC Docket No. 17-97 through the Commission's Electronic Comment Filing System (ECFS), before filing the redacted and unredacted copies directly through the Robocall Mitigation Database portal.<sup>7</sup> We recognized that this approach was already established by the Public Notice announcing the Robocall Mitigation Database, and proposed reiterating the approach in this Protective Order. We received no comments on this proposal, and now adopt our proposed approach in the attached Protective Order.

We also adopt the standard Commission provisions regarding labeling confidential or highly confidential documents with language signifying their confidentiality. Because many voice service providers filed in the Robocall Mitigation Database prior to the release of this Public Notice and Protective Order, we establish that these labeling provisions of the attached Protective Order will only apply prospectively to providers filing after this item's release. However, confidential filings previously submitted in accordance with the procedures detailed in the Public Notice announcing the opening of the Robocall Mitigation Database<sup>8</sup> will also be subject to the terms of this Protective Order even if they do not bear the labels this Protective Order now requires; this means voice service providers that previously submitted confidential documents need not re-file.

While we did not seek comment on this approach in the Protective Order Public Notice, we find that it is appropriate here. Prior to the release of this Protective Order Public Notice, the unique process for filing in the database had been established in the Robocall Mitigation Database Opening Public Notice and many voice service providers submitted confidential filings consistent with the process therein established. In the Public Notice seeking comment on this Protective Order, we sought comment on formalizing the approach rather than revising it to add additional submission requirements on filers or requiring voice service providers to re-file. We believe leaving the process as-is for earlier filers is consistent with notions of notice and filers' expectations, and see minimal benefit to requiring providers to re-submit confidential filings.

*Access to Information – Parties.* In the attached Protective Order, we limit access to confidential information to certain entities and individuals involved in robocall compliance and enforcement. In the Protective Order Public Notice, we proposed only allowing access to confidential and highly confidential information to limited categories of entities and individuals, including: federal, state, local, and Tribal governmental entities involved in robocall enforcement; the registered industry traceback consortium;<sup>9</sup> the STIR/SHAKEN Governance Authority;<sup>10</sup> and intermediate providers and voice service providers who accept call traffic directly from a voice service provider listed in the database and request to review what

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<sup>7</sup> Database Protective Order Public Notice at 2.

<sup>8</sup> Wireline Competition Bureau Announces Opening of Robocall Mitigation Database and Provides Filing Instructions and Deadlines, WC Docket No. 17-97, Public Notice, DA 21-454, at 3-4 (WCB Apr. 20, 2021) (Database Opening Public Notice).

<sup>9</sup> On July 27, 2020, after an application process, the Commission designated the Industry Traceback Group as the registered Traceback Consortium. *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 35 FCC Rcd 7886 (EB 2020).

<sup>10</sup> The Governance Authority defines policies and procedures for which entities can acquire "certificates" needed to participate in STIR/SHAKEN. The current Governance Authority is the Secure Telephone Identity Governance Authority (STI-GA). See *Second STIR/SHAKEN Order*, 36 FCC Rcd at 1864, para. 11 & n.37.

actions that provider is taking to combat the origination of illegal robocalls.<sup>11</sup> For this final group, we proposed limiting access to the requesting party's outside counsel and consultants, as well as the employees and support personnel of these outside firms. We received no comments, and we adopt our proposal. We find this approach appropriately balances the Commission's goals of promoting transparency in robocall mitigation efforts and protecting providers' sensitive information from competitors and bad actors attempting to circumvent mitigation efforts because it grants access to information only to appropriate parties involved in robocall compliance and enforcement that will aid in robocall mitigation oversight.<sup>12</sup>

*Access to Information – Process.* We also adopt our proposal that any person, other than support personnel, seeking access to confidential and highly confidential information must sign and abide by an Acknowledgement of Confidentiality agreeing to be bound by the terms and conditions of the Protective Order, and both file the Acknowledgment with the Commission and deliver a copy to the filing party.<sup>13</sup> We received no comments in opposition to this proposal, and we find that this approach appropriately balances the Commission's goals of transparency and protection of confidential information because it binds parties seeking access to information to the provisions of the Protective Order, a practice which appropriate parties involved in robocall compliance and enforcement will adhere to in order to conduct oversight and which bad actors will likely avoid so as not to expose themselves.

*Other Protective Order Provisions.* Beyond the specific modifications elaborated above, we adopt the standard provisions and appendices found in other Bureau protective orders. In the Protective Order Public Notice, we proposed adopting provisions typically found in protective orders released by the Bureau, including provisions governing the designation of information as confidential or highly confidential, challenges to designations, the procedure for objecting to the disclosure of confidential or highly confidential information, and the review of confidential and highly confidential documents.<sup>14</sup> In addition, we proposed adopting similar protective order appendices, including one which contains an Acknowledgement of Confidentiality, and another which details what information and documents can be designated as highly confidential.<sup>15</sup> We received no comments on these proposals, and we now adopt them in the attached Protective Order.

In its reply comments, USTelecom argues that the Bureau should ensure that “robocall mitigation plans are public by default, and only truly confidential and sensitive information is withheld from public

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<sup>11</sup> *Database Protective Order Public Notice* at 2.

<sup>12</sup> *Second STIR/SHAKEN Order*, 36 FCC Rcd at 1902-03, paras. 82-83.

<sup>13</sup> *Database Protective Order Public Notice* at 3.

<sup>14</sup> *Protective Order issued in the matter of Applications for HDC Alpha, LLC; HDC Beta, LLC; HDC Gamma, LLC; HDC Delta, LLC; HDC Epsilon, LLC for iVoip Authorization Pursuant to Section 52.15(g)(3) of the Commission's Rules*, WC Docket Nos. 19-313, 19-314, 19-315, 19-316, and 19-317, Protective Order, DA 21-105 (WCB Feb. 1, 2021) (providing an example of a typical Bureau protective order and relevant provisions) (*HDC Protective Order*); *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Protective Order, DA 20-596 (WCB June 5, 2020) (providing another example of a typical Bureau protective order and relevant provisions) (*Access Arbitrage Protective Order*).

<sup>15</sup> *HDC Protective Order* at Appendices A and B (providing examples of appendices containing an Acknowledgement of Confidentiality and a list of highly confidential information and documents); *Access Arbitrage Protective Order* at Appendices A and B (providing examples of appendices containing an Acknowledgement of Confidentiality and a list of highly confidential information and documents). While we proposed including an appendix detailing highly confidential information, upon further review we find one unnecessary due to the limited number of categories of highly confidential information in this context. As such, we incorporate these few categories into the definition of “Highly Confidential Information” and did not include a separate appendix in the Protective Order for highly confidential information.

view,” and asks the Bureau to “take action where providers seek overbroad confidentiality.”<sup>16</sup> We agree that filings which are overly redacted are not appropriate and adopt in the attached Protective Order a process for addressing these filings. Under this Protective Order and our confidentiality rules, a filing is “public by default” and treated as confidential only upon request. This means unredacted information included in non-confidential robocall mitigation plans and information submitted to the database outside of program descriptions can be viewed by the public. When a party requests confidentiality, the Protective Order allows third party challenges and permits the Commission to initiate review of the request on its own.<sup>17</sup> We will not hesitate to act should we identify improper confidentiality requests.

*Contact Information.* For further information, please contact Michael Nemcik, Competition Policy Division, Wireline Competition Bureau, at (202) 418-2343 or by email at [Michael.Nemcik@fcc.gov](mailto:Michael.Nemcik@fcc.gov).

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<sup>16</sup> USTelecom Reply Comments at 1, 3-4.

<sup>17</sup> See *infra* Appx. A, para. 4.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 ) WC Docket No. 17-97  
Call Authentication Trust Anchor )

**Released: October 14, 2021**

1. In this Protective Order, we set forth procedures to (i) limit access to proprietary or confidential information that may be filed in voice service providers' robocall mitigation programs and (ii) more strictly limit access to certain particularly sensitive information. We find that allowing limited access to sensitive materials pursuant to the procedures set forth in this Protective Order balances the Commission's goals of promoting transparency in robocall mitigation efforts and protecting providers' sensitive information both from competitors and from bad actors attempting to circumvent these mitigation efforts.<sup>18</sup> We also clarify that implementation certifications, contact information, and other information not included in robocall mitigation program descriptions submitted to the Robocall Mitigation Database are public and cannot be marked as confidential. Accordingly, sensibly balancing the public and private interests involved, we conclude that these procedures serve the public interest and adopting them "best conduce[s] to the proper dispatch of the Commission's business and to the ends of justice."<sup>19</sup>

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his or her clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

“Confidential Information” means information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Commission’s implementing rules, unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or Sections 0.459 or 0.461 of its rules,<sup>20</sup> that such information is not entitled to confidential treatment.

<sup>18</sup> *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1902-03, paras. 82-83 (2020) (*Second STIR/SHAKEN Order*).

<sup>19</sup> 47 U.S.C. § 154(j).

<sup>20</sup> 47 CFR §§ 0.459, 0.461.

“Counsel” means In-House Counsel and Outside Counsel of Record.

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

“Highly Confidential Information” means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to protection under FOIA and the Commission’s implementing rules; and that constitutes detailed technical information about a provider’s network, detailed, competitively sensitive information about a provider’s business strategies, or highly detailed information about a provider’s robocall mitigation strategies that would allow bad actors to circumvent a provider’s mitigation efforts, unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or Sections 0.459 or 0.461 of its rules,<sup>21</sup> that any such information is not entitled to confidential treatment.

“In-House Counsel” means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“Outside Counsel of Record” or “Outside Counsel” means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. For purposes of this Protective Order, the terms “Outside Counsel of Record” and “Outside Counsel” include any attorney employed by a federal, state, local, or Tribal governmental entity involved in robocall enforcement; by the registered industry traceback consortium;<sup>22</sup> or by the STIR/SHAKEN Governance Authority,<sup>23</sup> provided that such attorney is not involved in Competitive Decision-Making.

“Outside Consultant” means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. For purposes of this Protective Order, the term “Outside Consultant” includes any consultant or expert employed by a federal, state, local, or Tribal governmental entity involved in robocall enforcement; by the registered industry traceback consortium; by or the STIR/SHAKEN Governance Authority, provided that such consultant or expert is not involved in Competitive Decision-Making.

“Outside Firm” means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

“Participant” means i) a federal, state, local, or Tribal governmental entity involved in robocall enforcement; ii) the registered industry traceback consortium; iii) the STIR/SHAKEN Governance Authority; or iv) an intermediate provider or a voice service provider that accepts call traffic directly from

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<sup>21</sup> 47 CFR §§ 0.459, 0.461.

<sup>22</sup> On July 27, 2020, after an application process, the Commission designated the Industry Traceback Group as the registered Traceback Consortium. *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 35 FCC Rcd 7886 (EB 2020).

<sup>23</sup> The Governance Authority defines policies and procedures for which entities can acquire “certificates” needed to participate in STIR/SHAKEN. The current Governance Authority is the Secure Telephone Identity Governance Authority. *See Second STIR/SHAKEN Order* at 6, para. 11 & n.37.

a voice service provider listed in the database and requests to review what actions that provider is taking to combat the origination of illegal robocalls.

“Redacted Confidential Document” means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

“Redacted Highly Confidential Document” means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) or Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 7 or 12 of this Protective Order.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 17-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” A document that contains Confidential Information that was submitted through the Robocall Mitigation Database portal prior to the effective date of this Protective Order that is labelled Confidential or contains a similar marking shall also be considered a Stamped Confidential Document. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Stamped Highly Confidential Document” means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 17-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” A document that contains Highly Confidential Information that was submitted through the Robocall Mitigation Database portal prior to the effective date of this Protective Order that is labelled Confidential or contains a similar marking shall also be considered a Stamped Highly Confidential Document. By designating a document a “Stamped Highly Confidential Document,” a Submitting Party signifies and represents that it contains Highly Confidential Information.

“Submitting Party” means a person or entity who submits a Stamped Confidential Document or a Stamped Highly Confidential Document.

“Support Personnel” means employees of a Reviewing Party’s Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information or Highly Confidential Information that is submitted under this Protective Order.

3. *Designation of Information as Confidential or Highly Confidential.* A Submitting Party may designate as Highly Confidential only that information that constitutes detailed technical information about a provider’s network, detailed, competitively sensitive information about a provider’s business strategies, or highly detailed information about a provider’s robocall mitigation strategies that would allow bad actors to circumvent a provider’s mitigation efforts. If a Submitting Party believes that additional types of information should be designated as Highly Confidential, the Submitting Party shall

submit a request to amend this order along with a supporting explanation. To the extent the request is granted, an amended order will be issued.

4. *Challenge to Designation.* Any person wishing to challenge the designation of a document, portion of a document, or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Commission may also initiate such a review on its own. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days and include a justification for treating the information as Confidential or Highly Confidential, as appropriate. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.<sup>24</sup> Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing FOIA.<sup>25</sup>

5. *Submission of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party that wishes to designate a portion of its filing as confidential shall first file through the Commission's Electronic Comment Filing System ("ECFS") in WC Docket No. 17-97 a request that the information be withheld from public inspection as required by section 0.459 of the Commission's rules, providing all of the information required by that rule.<sup>26</sup> For documents submitted after the effective date of this Protective Order, the Submitting Party shall also notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document or Stamped Highly Confidential Document. A Submitting Party shall then submit through the Robocall Mitigation Database portal one copy of each Stamped Confidential Document and each Stamped Highly Confidential Document it seeks to file in one combined attachment. Each page of the Stamped Confidential Document or Stamped Highly Confidential Document shall be stamped "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 17-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" or "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 17-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION", as appropriate. In addition, with respect to each Stamped Confidential Document and each Stamped Highly Confidential Document submitted, the Submitting Party shall also submit through the Robocall Mitigation Database portal a copy of the respective Redacted Confidential Document or Redacted Highly Confidential Document in one combined attachment. Each Redacted Confidential Document or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential Document or Stamped Highly Confidential Document from which it is derived. To the extent that any page of the filing contains both Confidential Information or Highly Confidential Information and non-confidential information, only the Confidential Information and Highly Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information, and the non-confidential information.

6. *Copying Sensitive Documents.* If, in the reasonable judgment of the Submitting Party, a Stamped Highly Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend "Additional Copying Restricted." Subject to the provisions for access to information in electronic format in paragraph 10, each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the

<sup>24</sup> Cf. 47 CFR §§ 0.459(g), 0.461(i).

<sup>25</sup> See 47 CFR §§ 0.459(h), 0.461.

<sup>26</sup> See 47 CFR § 0.459.



Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

7. *Procedure for Obtaining Access to Confidential Information and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Confidential Information or Highly Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Confidential Information or Highly Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

8. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.*<sup>27</sup> Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or Highly Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information or Highly Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information or Highly Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information or Highly Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information or Highly Confidential Information.<sup>28</sup> If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information or Highly Confidential Information by the Reviewing Party until the objection is resolved.

9. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents

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<sup>27</sup> This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential and Highly Confidential Information pursuant to this Protective Order. If a party timely requests that certain information be entirely withheld from review by *any* individual under the Protective Order, where such an objection is timely made, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

<sup>28</sup> An objection ordinarily will first be ruled upon by the Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party.

and Stamped Highly Confidential Documents of such party at the offices of the party's Outside Counsel of Record or as otherwise agreed to by the Reviewing Party. Subject to the provisions of paragraph 6, a Reviewing Party shall be provided the following alternatives: 1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; 2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or 3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. A Submitting Party may make the documents available to the Reviewing Party electronically. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 7. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 21.

10. *Review of Highly Confidential Information in Electronic Format.* A Submitting Party shall make available to a Reviewing Party one copy of Highly Confidential Information contained, recorded, or electronically stored on an appropriate electronic storage device (such as a CD-ROM, DVD, flash drive or portable hard drive), which shall be considered a Stamped Highly Confidential Document. The medium containing the information in electronic format should be physically delivered to the Reviewing Party; a Reviewing Party may not require that it be transmitted electronically. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Highly Confidential Information shall be password protected immediately. The Highly Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Highly Confidential Information shall be deleted from the computer no later than when proceedings at the Commission are complete. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

11. *Use of Confidential and Highly Confidential Information.* Persons obtaining access to Confidential and Highly Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from that portion of this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings. Should the Commission reveal any Confidential or Highly Confidential Information in its orders in this proceeding, it will do so either by redacting any such Confidential or Highly Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential or Highly Confidential Information under this Protective Order, as appropriate, or as otherwise permitted by law.

12. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Confidential Information and Highly Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder. Information derived from Confidential Information or Highly Confidential Information shall be treated as Confidential Information or Highly Confidential Information, respectively, unless the Commission determines otherwise.

13. *Filings with the Commission.* A party making a filing in this proceeding that contains Confidential or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "Confidential Filing") and an

accompanying cover letter.<sup>29</sup> The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 17-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 17-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal and will not be placed in the Commission’s public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential or Highly Confidential Information (the “Redacted Confidential Filing”), to the Commission via ECFS.<sup>30</sup> The Redacted Confidential Filing and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information or Highly Confidential Information, only the Confidential Information or Highly Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information and the non-confidential information. Two copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Michael Nemcik, [Michael.Nemcik@fcc.gov](mailto:Michael.Nemcik@fcc.gov), (202) 418-2343, Wireline Competition Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

14. *Non-Disclosure of Confidential Information, and Highly Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Protective Order, Confidential Information and Highly Confidential Information shall not be disclosed further.

15. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information and Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Protective Order.

16. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission’s rules.<sup>31</sup>

17. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on

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<sup>29</sup> The initial submission of Stamped Confidential Documents and Stamped Highly Confidential Documents is governed by paragraph 5. This paragraph governs the submission of filings that contain Confidential Information or Highly Confidential Information contained in or derived from those documents.

<sup>30</sup> If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary’s Office along with the appropriately stamped cover letter, as described in this paragraph.

<sup>31</sup> 47 CFR §§ 0.442, 0.461.

examination of Confidential Information or Highly Confidential Information to which they have access under this Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information or Highly Confidential Information.

18. *No Waiver of Confidentiality.* Disclosure of Confidential or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: 1) not to assert any such waiver; 2) not to use Confidential or Highly Confidential Information to seek disclosure in any other proceeding; and 3) that accidental disclosure of Confidential or Highly Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

19. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Stamped Highly Confidential Document, Confidential Information, or Highly Confidential Information.

20. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

21. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

22. *Questions.* Questions concerning this Protective Order should be addressed to Michael Nemcik, [Michael.Nemcik@fcc.gov](mailto:Michael.Nemcik@fcc.gov), (202) 418-2343, Wireline Competition Bureau, Federal Communications Commission, or to Joel Rabinovitz, [Joel.Rabinovitz@fcc.gov](mailto:Joel.Rabinovitz@fcc.gov), (202) 418-0689, Transaction Team, Office of General Counsel.

23. *Authority.* This Order is issued pursuant to Sections 4(j), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j), 214 and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.291 of the Commission's rules, 47 CFR § 0.291, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

**APPENDIX A**  
**Acknowledgment of Confidentiality**  
**WC Docket No. 17-97**

I am seeking access to ☐ only Confidential Information or ☐ Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Name]  
[Position]  
[Firm]  
[Telephone]